



Second Study Commission  
Civil law and procedure

Meeting in Tunis (Tunisia), 10-14 September 1995

Conclusions

JUDICIAL PROCEEDINGS DEALING WITH INSOLVENCY BOTH PERSONAL AND CORPORATE

The Commission notes that the juridical systems examined take into consideration the state of insolvency of the debtor, individual or corporate, and apply to them a system of juridical rules which can lead to liquidation of assets and the distribution of the proceeds amongst the creditors.

The Commission's discussions dealt in particular with the following points: the applicability of special procedures, the jurisdiction of judicial bodies, the social aspects of liquidation procedures, and their international aspects.

1. In contrast to countries the system of which has a procedure applicable generally to individuals and corporations, a second group of countries limits the application of the procedure, with certain exceptions, to individuals and corporations engaged in business. In certain countries an attempt is made to soften the rigour of the system by provisions permitting the improvement of the economic situation of the non commercial debtor. It would appear to be necessary to provide in the case of non-commercial individuals some procedures before a civil tribunal leading to suspension of execution against individuals by putting in place moratoriums or other extraordinary measures under the control of the judge.
2. The putting in place of specific procedures in particular the declaration of the state of insolvency and the control of the list of the creditors should fall under judicial authority in the framework of jurisdiction necessarily including professional judges who must have the opportunity of recourse to experts particularly in the context of economic measures for keeping the business in existence.
3. In the situation of an immediate economic crisis, it is a political matter to deal with the problem of loss of employment which follows liquidation and to favour plans of reconstruction. While the Commission leaves open the question of whether and, if so, to what extent the State and public money should be substituted for the defaulting debtor, the situation of wage-earners merits special attention. It is appropriate also to guarantee payment of wages at least in principle either by the grant of special guarantees such as a preference or by a take-over by a public body.
4. In view of the multiple problems which are caused by liquidation procedures on an international level, it is recommended that international conventions should be concluded having as one of their goals a guarantee of recognition of foreign judgements, if not automatically, at least by simplified procedures.